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Message Text

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ACTION IO-14

INFO OCT-01 EUR-25 ISO-00 AF-10 ARA-16 EA-11 NEA-10 RSC-01

CIAE-00 DODE-00 PM-07 H-03 INR-10 L-03 NSAE-00 NSC-10

PA-04 PRS-01 SPC-03 SS-20 USIA-15 ACDA-19 SY-10

USSS-00 CPR-02 DRC-01 /196 W
---------- 013557
P R 181743Z OCT 73
FM USMISSION USUN NY
TO SECSTATE WASHDC PRIORITY 316
INFO AMEMBASSY LONDON

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LONDON FOR NELSON

E.O. 11652: N/A
TAGS: UNGA, PINS, CGEN
SUBJECT: PRIVILEGES AND IMMUNITIES PROBLEM AND CONVENTION ON PROTECTION OF DIPLOMATS

1. IN DRAFTING COMMITTEE WORKING ON CONVENTION ON PROTECTION OF DIPLOMATS, ADOPTION OF WHICH THIS UNGA OF PARAMOUNT INTEREST TO USG, UAE REP, DR. BURHAN WASFI HAMMAD, PROPOSED THAT ADDITIONAL PHRASE BE ADDED TO PARAGRAPH 1(B) OF ARTICLE 1, WHICH DEFINES CLASS OF PEOPLE CONSIDERED "INTERNATIONALLY PROTECTED PERSONS" UNDER CONVENTION BECAUSE RECEIVING STATE UNDER DUTY TO PROVIDE SPECIAL PROTECTION FROM ATTACK ON PERSON, FREEDOM OR DIGNITY OF SUCH PERSONS. PHRASE HAMMAD DESIRED TO ADD WOULD MAKE CLEAR THAT THIS PARAGRAPH APPLY WHETHER OR NOT THE DIPLOMAT IN QUESTION WAS A NATIONAL OF THE SENDING STATE. HAMMAD DID NOT PRESS AMENDMENT IN DRAFTING COMMITTEE DISCUSSION, BUT STATED INTENTION FORMALLY TO TABLE AMENDMENT DURING SECOND READING OF CONVENTION IN SIXTH COMMITTEE. FROM REACTIONS IN DRAFTING COMMITTEE
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TO SUGGESTION, IT CLEARTHAT WHILE MANY THINK AMENDMENT

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UNNECESSARY, NO DELS DISAGREE AND IT WOULD BE EASILY
ADOPTED.
2. AFTER MEETING, HAMMAD INFORMED DELOFF THAT ORIGIN OF
HIS SUGGESTION WAS DENIAL OF USG TO ACCORD HIM PRIVILEGES
AND IMMUNITIES. RELEVANT PARAGRAPH OF SEPTEMBER 21, 1973
LETTER FROM LILLIAN R. LICCARDI TO UN CHIEF OF PROTOCOL
KORLE STATES:
"IT IS THE POLICY OF THE DEPARTMENT OF STATE NOT TO
ACCORD DIPLOMATIC STATUS TO INDIVIDUALS WHO ARE NOT
NATIONALS OF THE STATE THEY REPRESENT. SINCE DR. HAMMAD
IS A CITIZEN OF JORDAN, AND NOT A CITIZEN OF THE
UNITED ARAB EMIRATES, THE DEPARTMENT OF STATE HAS INFORMED ME
THAT IT CANNOTAGREE TO THE INCLUSION OF HIS NAME ON
THE DIPLOMATIC LIST UNDER SECTION 15 OF THE HEADQUARTERS
AGREEMENT."
3. HAMMAD SAID HE WOULD NOT PRESS AMENDMANT AND WOULD
SETTLE FOR STATEMENT BY CHAIRMAN OF DRAFTING COMITE
THAT RHIRD COUNTRY NATIONALS COVERED PROVIDED USG COULD
SOLVE HIS PROBLEM. US DEL BELIEVES INCLUSION OF HAMMAD'S
PHRASE WOULD NEEDLESSLY COMPLICATE EFFORTS TO ADOPT CON-
VENTION ON PROTECTION OF DIPLOMATS BY ADDITION OF PHRASE
WHICH ENTIRELY INAPPROPRIATE IN CONTEXT OF DIPLOMATS
CONVENTION. MOREOVER, WE ARE CONVINCED THAT HAMMAD IS
CORRECT IN OBJECTING TO DEPARTMENT'S DECISION TO DENY HIM
PRIVILEGES AND IMMUNITIES.
4. UNDER SECTION 15(2) OF HEADQUARTERS AGREEMENT BETWEEN
US AND UN, IT WAS MATTER OF AGREEMENT BETWEEN USG AND SYG
AS TO WHICH RESIDENT MEMBERS OF STAFFS OF MISSIONS IN
ADDITION TO PRINCIPAL REPRESENTATIVE WOULD RECEIVE DIPLO-
MATIC PRIVILEGES AND IMMUNITIES. THIS SITUATION CHANGED
WHEN USG BECAME PARTY TO UN CONVENTION ON PRIVILEGES AND
IMMUNITIES ON APRIL 29, 1970. UNDER SECTION 11 OF CON-
VENTION, NO RIGHT IS RESERVED TO USG TO DENY PRIVILEGES
AND IMMUNITIES. USG, HOWEVER, IS PROTECTED AGAINST ABUSE
OF PRIBILEGES AND IMMUNITIES BY RESERVATION WHICH WE MADE
TO ARTICLE IV. USG CONSIDERS THAT PRIVILEGES AND IMMUNI-
TIES GRANTED UNDER SECTION 11(G) OF CONVENTION IS FULL
DIPLOMATIC PRIVILEGES AND IMMUNITIES, AND THIS POSITION
TAKEN IN SENATE FOREIGN RELATIONS COMMITTEE REPORT
NO. 91-17 (1970), PAGE 3, AND IN HEARINGS CONTAINED IN
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SAME VOLUME IN STATEMENT AND SUBMISSIONS BY DEPARTMENT
LEGAL ADVISER, PAGES 14 AND 29.
5. WE HAVE SERIOUS DOUBT WHETHER, EVEN WITH REGARD TO
BILATERAL RELATIONS, USG ENTITLED TO DENY DIPLOMATIC PRIVI-
LEGES AND IMMUNITIES TO THIRD COUNTRY NATIONALS UNDER
VIENNA CONVENTION OF DIPLOMATIC RELATIONS. UNDER ARTICLE 8
OF VIENNA CONVENTION, PARAGRAPH 3, CONSENT OF RECEIVING
STATE REQUIRED TO ALLOW THIRD COUNTRY NATIONAL TO BE

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MEMBER OF DIPLOMATIC STAFF, UNDER ARTICLE 38, PARAGRAPH
1, HOWEVER, RECEIVING STATE GIVEN ABILITY TO LIMIT PRIVILEGES
AND IMMUNITIES TO OFFICIAL ACTS IMMUNITY ONLY REPEAT ONLY
WITH REGARD TO DIPLOMATIC AGENT WHO IS NATIONAL OF OR
PREMANENT RESIDENT IN RECEIVING STATE. BY IMPLICATION,
THEREFORE, IT APPEARS THAT ONE RECEIVING STATE CONSENTS TO
THIRD COUNTRY NATIONAL BEING DIPLOMATIC AGENT, IT MUST
ACCORD FULL DIPLOMATIC PRIVILEGES AND IMMUNITIES.
FOR THESE REASONS, WE QUESTION, EVEN WITH REGARD TO BILATERAL REA-
LATIONS , THE STATEMENT OF DEPARTMENT POLICY CONTIANED IN
LICCARDI LETTER.
6. MATTER HAS BECOME ONE OF URGENCY IN CONTEXT ON CON-
VENTION ON PROTECTION OF DIPLOMATS. IF WE CANNOT TELL
DR. HAMMAD BY OCT 19, OR AT LEAST 22ND, THAT WE RECONGNIZE
THAT HE SHOULD NOT BE DEPRIVED OF DIPLOMATIC PRIVILEGES
AND IMMUNITIES BECAUSE HE IS THIRD COUNTRY NATIONAL, WE
RISK SERIOUS DIFFICULTIES IN OUR EFFORTS ON CONVENTION.
FYI. WE ARE INFORMED THAT SIMILAR PROBLEMS EXISTS WITH
REGARD TO INDIAN NATIONAL, MANI, WHI IS RE OF BUTAN.
FINALLY, HAMMAD TELLS US THAT HE AWARE OF AT LEAST ONE
PRECEDENT IN RECENT YEARS WHERE THIRD
COUNTRY NATIONAL GRANDTED DIPLOMATIC PRIVILEGES AND IMMUNITIES
WHILE UN REP. END FYI.
BENNETT

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